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全球化时代的跨国公司在中國：贡献与监管研究  
**The Dynamics of Multinational Corporations in  
China: A Study of its Contributions and  
Regulations in an Epoch of Globalization**

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## 摘要

毫无疑问地，跨国公司（MNCs）的跨国经营活动与我们的日常生活息息相关。很多家喻户晓的品牌如阿迪达斯、埃克森美孚、戴姆勒·克莱斯勒、三星以及其它很多这样的“powerhouses”向我们提供了生活必需品和各种服务，推动了科技进步，改善了我们的生活方式，进行创新研究和开发（R&D）并促进了全球贸易的加速发展，这些都是大家无法否认的事实。总之，作为一个私立的个体，这些跨国公司的存在成为了推动全球经济发展的增长引擎。虽然跨国公司给全球社会带来了很多的利益，但它们的跨国界活动还是不可否认地在全球范围内引发了大量的问题。

尽管有各种各样的监管措施来监控这些大企业，比如说各种法律，如侵权法、公司法、劳动法，环境保护法以及由诸如联合国这样的国际组织制定的无数的国际法规和“软倡议”，例如联合国跨国公司行为准则草案（UNCTC）、国际劳工组织三方宣言（ILO），但跨国公司的监管问题依然存在，而且问题还不断地增加并困扰着中国等大部分发展中国家。围绕着跨国公司的监管和治理面临的紧迫难题，本论文试图通过引进一种集中管理系统——“中央集中管理”模式来解决跨国公司的监管难题。

首先，论文会介绍跨国公司积累起来的巨大势力和财力，并以中国，一个跨国公司云集的国家为例来分析跨国公司在经济、社会 and 科技方面对中国产生的影响。接着，通过选取汽车、快速消费品（FMCG）和通信这三个在中国大陆获得空前发展的关键性行业来进一步阐述跨国公司是如何使它们的各项业务在中国实现本土化的，在这一章里，论文指出，跨国公司尽管给中国带来了不尽的好处，但它们在中国的商业活动还是不时地违反中国的相关法律法规。为了使论文的论点更突出，接下来的章节会继续举例说明跨国公司监管普遍面临的问题。

后部分将集中讨论中国面临的两个最基本的跨国公司监管挑战：中国劳工的被剥削问题和环境恶化问题。这两章将通过分析中国的各项法律和政策，以及为规范跨国公司的行为，中国所采取的一系列积极措施来重点探讨跨国公司监管面临的基本困境。此外，这两章还将举几个典型案例来说明跨国公司在经济、政治和社会方面对中国施加的影响力。在最后的章节，论文针对跨国公司错综复杂的运作方式引出了“中央集中监管”监管模式，这种监管模式可以逐步解决中国面临的对跨国公司监管问题。这一部分还讨论集中监管体系长期有效运作的利弊问题。

**关键词：**中国；经济；跨国公司；政治；监管；社会

## Abstract

Our daily lives are, without question, inextricably integrated with the trans-border operational activities of multinational corporations (MNCs). These giant enterprises with household names like Adidas, Daimler-Chrysler, Samsung, including many more other such ‘powerhouses’, have provided us with much needed goods and services, invented sophisticated technologies to improve our lifestyles, conducted innovative research and development (R&D) and are indeed responsible for the unprecedented acceleration of our global trade. In short, the mere existence of multinationals, as a private entity, has acted as an impetus which has driven the exponential growth of the global economy. Albeit the multitudes of advantages multinationals have conferred upon the global community, their trans-border activities have, undeniably, caused a substantial amount of regulatory problems on a global scale.

Notwithstanding the various regulatory tools available to regulate these giant enterprises, such as those under the wings of national regulations, i.e. tort, company, labour, and environmental laws, combined with the endless international regulations or ‘soft initiatives’ undertaken by international actors like *United Nations* (UN); examples include the draft *UN Code of Conduct on Transnational Corporations* (UNCTC) or the *International Labour Organization (ILO) Tripartite Declaration*, the regulatory problems of multinationals persist and continue to accrue, and for the most part plague many developing nations such as China. In lieu of the pressing issues surrounding the regulations and governance of multinational corporations, this paper seeks to introduce an approach to curb the regulatory challenges of multinationals by introducing an all-centralized regulatory system; a model ‘state centred regulation’.

As an introduction to the immense power and wealth multinationals have yielded, China is a prominent illustration as one of the major recipients of multinationals’ widespread contributions; economically, socially and politically. By choosing three key industries which have experienced unprecedented growth in the Mainland; namely automotive, fast-moving consumer goods (FMCG) and telecommunications, these examples further demonstrate that, not only has China become ‘home’ to multinationals’ multifaceted operations, but it has increasingly turn into a ‘paradise’

for them. In spite of bringing myriads of benefits to the country, multinational corporations have consistently violated Chinese laws and regulations whilst conducting their activities in China.

Of the innumerable regulatory challenges present in China as a consequent of multinationals' omnipresence, two fundamental regulatory challenges continue to plague China; the exploitation of Chinese labour forces and the escalation of China's environmental degradation. At this juncture, it is imperative to highlight the predicaments surrounding these two issues by examining the various laws and policies implemented by China, combined with the positive measures the country has adopted in attempting to better Chinese policies and regulations in the governance of multinationals. In addition to that, in an attempt to exemplify the economic, politic and social clouts multinationals exert upon China, some noteworthy cases shall be brought to light.

Given all the shortcomings and limitations inherent within Chinese regulations and policies, the paper aspires to introduce a 'state centred regulation' that is tailored to meet the convolutions of the operations of multinationals, as a progressive way forward to curb the regulatory challenges China faces in the governance of multinationals. Given that, it is important to consider some positive and negative significant features of the proposed centralized regulatory system which are pertinent to its initiation and effective operation in the long term.

As final note, it is pertinent to take into account that corporate regulations and accountability need to be considered in light of the ever-changing and growing globalized world without undermining the sovereignty of a nation state like China, whom as a state actor, will continue to remain the key player in the governance of multinational corporations within its Chinese borders.

**Keywords:** China, economic, multinational corporations, politics, regulations, social



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## Abbreviations & Acronyms

American Chamber of Commerce	Am Cham
Carbon Dioxide	CO <sub>2</sub>
Chief Executive Officer	CEO
Energy Charter Treaty	ECT
European Union	EU
Foreign Direct Investment	FDI
Gross Domestic Product	GDP
Institute of Public and Environmental Affairs	IPEA
International Centre for Settlement of Investment Disputes	ICSID
International Criminal Court	ICC
International Labour Organization	ILO
Labor Contract Law	LCL
Multinational Corporations	MNCs
National Contact Point	NCP
Non-Governmental Organizations	NGOs
Organisation for Economic Co-operation and Development	OECD
State Environmental Protection Administration	SEPA
Sulphur Dioxide	SO <sub>2</sub>
Transnational Corporations	TNCs
United Nations	UN
United Nations Code of Conduct on Transnational Corporation	UNCTC
United Nations Conference on Trade and Development	UNCTAD
World Trade Organization	WTO

厦门大学博硕士论文摘要库

# Chapter I

## Introduction

Our daily lives are very much integrated with the activities of multinational corporations (MNCs). The operational activities of multinationals have facilitated an environment of freer international market by providing opportunities for technology transfer leading to the discovery of new domestic industries. The global presence of multinationals have brought in capital and technology, management techniques, offered much needed goods and services that were previously unavailable, provided employment opportunities for all and have immensely improved manufacturing in a wide variety of products especially in the host countries they operate in; particularly nations with emerging economies and developing countries. Multinational corporations are also responsible for the unprecedented acceleration of the world's trade and investments. These giant corporations with famous brands like Coca-Cola, Gap Inc., McDonald's, Microsoft, Nestlé, Nike, Shell and many more have become staple household names and powerhouses the world over. Following a report by the *Institute for Policy Studies*, of the 100 largest economies in the world, 51 are corporations<sup>1</sup>.

When Deng Xiaoping started opening up China's economic gate in 1978 upon embarking the path of economic reform, not only did Deng opened up the Middle Kingdom to the world, but he also provided corporations with endless opportunities, as well as opening up new possibilities for these giant enterprises to venture and tap into the Chinese market. As a newly emerging 'communist-to-capitalist' country, China depended largely on foreign investments to boost and build up the country's economy and infrastructures. Consequently, it had a dire need for multinational corporations for many reasons, among those; to create employment opportunities to China's tens of millions of people, to import technology as well as managerial, marketing and production expertise into the country<sup>2</sup>, and to indicate to other potentially interested giant corporations that China was ready to meet and

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<sup>1</sup> Anup Shah, *Corporate Power Facts and Stats*, (May 15<sup>th</sup>, 2001).

<sup>2</sup> Jean-Marc F. Blanchard, China, *Multinational Corporations, and Globalization: Beijing and Microsoft Battle over the Opening of China's Gates*, 31 Asian Perspective (2007) 67.

embrace the world, and was fundamentally ‘open for business’<sup>3</sup>. Just like any other countries who were on a ‘race to the bottom’ to attract foreign investors, China, too, was in the race. China offered a variety of attractive incentives to draw investments from multinationals into the country, such as tax breaks, more flexible laws and regulations, and privileged access to production inputs<sup>4</sup>.

As a result of that, China’s economy and business landscape experienced tremendous transformation from an ‘all-highly-centralized-economic-planning’ country to one which adopts liberal trade policies associated with challenges and opportunities. China’s accession to the World Trade Organization (WTO) in 2001 firmly established China’s growing potential market. With that, the presence of multinational firms grew in size and numbers in China. According to the report from The People’s Daily, more than 90 percent of the world’s top 500 multinationals had set up in China, with 30 percent of them moving their regional headquarters to the Middle Kingdom<sup>5</sup>. Their annual purchasing accumulated to an astounding figure exceeding 100 billion U.S. dollars<sup>6</sup>. Evidently, the visible economic growth of China has made building a business in the Middle Kingdom not only feasible but also essential for any multinational corporation<sup>7</sup> who wants a piece of China’s thriving and booming market.

The presence of multinationals in China as well as the world over, predominantly in developing nations, has undoubtedly brought the business environment of their host countries to a different level. According to the white paper, *Coming of Age: Multinational Companies in China* extensively completely by the Economist Intelligence Unit, the mere presence of multinationals in China provided opportunities for the domestic firms to gain knowledge on how to use sophisticated brand-building and marketing strategies widely employed by foreign corporations, while investments from these business conglomerates helped improved the infrastructures within the country and ease the mobility of the productions of

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<sup>3</sup> Jean-Marc F. Blanchard, China, *Multinational Corporations, and Globalization: Beijing and Microsoft Battle over the Opening of China’s Gates*, 31 Asian Perspective (2007) 67.

<sup>4</sup> Id.

<sup>5</sup> Multinational Corporations Make China Home, CRI English (September 28<sup>th</sup>, 2007).

<sup>6</sup> Id.

<sup>7</sup> *Coming of Age: Multinational Companies in China*, An Economist Intelligence Unit white paper in co-operation with KPMG (2004).

multinational corporations<sup>8</sup> throughout the country. The improvements on the Chinese infrastructures not only benefitted the multinationals but also made travelling within a huge country such as China, more convenient among its people and all alike. One evidently fine example of the magnitude of contributions by a multinational corporation is Pepsi. As of present, Pepsi has become a beverage giant in China<sup>9</sup>. Pepsi has 40 wholly-owned and joint venture companies throughout China, with 15 bottling plants and four snack-food factories employing over 10,000 Chinese staffs<sup>10</sup>. This giant beverage enterprise has invested over 800 million U.S. dollars in China and contributes an average of 50 million U.S. dollars in taxes to the Chinese government per annum<sup>11</sup>.

It is manifestly apparent that multinationals are powerful entities with immense wealth and influence. Their presence has unquestionably brought myriads of benefits not only to the country they invested in but also to the community of their host country. As Dr. Terry O'Callaghan observes, it would be unimaginable to live in a world without the existence of multinational corporations as "life would be truncated, localised, and in all probability, quite harsh"<sup>12</sup>. However, U.S. President, Abraham Lincoln, even recognized the power and influence of corporations as early as 1864 when he remarked that the enthroned of corporations ensued an era of corruption, power and influence<sup>13</sup>. Evidently, the passage of time witnessed the incremental and exponential growth of multinational corporations, not only in figures alone but also in power, with giant enterprises like Adidas, Carrefour, Ford, Pepsi, Wal-Mart and many other such multinational entities operating their widespread activities, spiralling across the globe.

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<sup>8</sup> *Coming of Age: Multinational Companies in China*, An Economist Intelligence Unit white paper in co-operation with KPMG (2004).

<sup>9</sup> *Pepsi was one of the earliest multinational companies in China*, FDI Magazine (August 1<sup>st</sup>, 2002).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Dr. Terry O' Callaghan, *The Regulatory Power of the Corporate Reputation: Corporations Confront Anti-Corporate Activism in an Era of Globalisation*, The Centre for International Risk School of International Studies University of South Australia.

<sup>13</sup> Anup Shah, *The Rise of Corporations*, Global Issues (September 3<sup>rd</sup>, 2002).

As a result of the manifestly profound global impact of multinationals especially in an epoch of globalization today, the “MNCs-in-command”<sup>14</sup> school of thought emerged in international relations. According to this school of thought, MNCs have great influence over states. This is due to the fact that multinationals are the vehicles for economic globalization. Their activities which transcend borders and frontiers bring huge increases in movements of capital, goods and services. Furthermore, foreign direct investments (FDI) from MNCs account for an increasing proportion of global economic activity. Because of the immense power, influence and wealth which multinationals possess, the world witnessed how these giant enterprises utilize their massive revenues to manipulate and compel their host countries to open up their markets, to defy the laws and regulations of states, and to control the distribution channel of the host countries they operate in.

To pen down a few cases how multinationals defy the laws and regulations in their host countries, the discussion takes China as an example; subsidiaries of world-renowned corporations such as American Standard, Panasonic, Pepsi, Nestlé and 3M were punished for discharging substandard waste water and for unauthorized construction activities which occurred in the absence of proper environmental impact assessments<sup>15</sup>. These multinationals clearly violated Chinese environmental laws and regulations, according to Ma Jun, director of the non-governmental Institute of Public and Environmental Affairs<sup>16</sup>. Another fine example is reported by Forbes in 2007 exposing 90 multinationals, with prominent names like General Motors (GM), Samsung, Unilever, Pepsi, and Yum Brands chains Kentucky Fried Chicken (KFC) and Pizza Hut making it on the list too, which have all been found by the Chinese environmental protection authorities to have brazenly violated the Chinese water pollution regulations since 2004<sup>17</sup>.

These giant enterprises are frequently heard of talking, promoting and practising corporate responsibility, yet they fail to even abide by the fundamental laws and regulations of their host countries. Most laws and regulations of the host

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<sup>14</sup> Jean-Marc F. Blanchard, China, *Multinational Corporations, and Globalization: Beijing and Microsoft Battle over the Opening of China's Gates*, 31 Asian Perspective (2007) 67.

<sup>15</sup> Jianqiang Liu, *Multinational Corporations Violating China's Environmental Laws and Regulations*, WorldWatch Institute (December 5<sup>th</sup>, 2006).

<sup>16</sup> Id.

<sup>17</sup> *Multinationals Accused of Violating China's Water Pollution Regulations*, Environmental Leader (August 24<sup>th</sup>, 2007).



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